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**Testimony of Charles Head, Cherokee Nation Secretary of State  
On “Advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination”**

**Hearing before the  
United States Senate Committee on Indian Affairs  
2:15 pm, September 20, 2012  
628 Dirksen Senate Office Building**

**Introduction:** Chairman Akaka, Vice Chairman Barrasso and members of the Committee, thank you for convening this hearing on “Advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination.” I am Charles Head, Cherokee Nation Secretary of State and on behalf of the Cherokee Nation, I am here to ensure the United States’ trust responsibility is maintained and the successful policy of Self-Governance continues to be strengthened so tribes can better and more efficiently serve their citizens.

Cherokee Nation was one of the first tribes to enter into a treaty with the United States. In that tradition, the Cherokee Nation executed a self-determination contract in 1990 under Title III of the Indian Self-Determination and Education Assistance Act (ISDEA). This contract gave the tribe more authority to administer its own programs and essential services. In just two decades, Cherokee Nation has taken over the administration of several Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) programs.

ISDEA is a powerful mechanism that provides tribes with the opportunity to administer essential governmental services and engage in local economic and resource development that is culturally appropriate and reflects the local population’s needs. The Self-Governance program is a model of efficiency for the federal government, reducing its costly administrative burdens. But rather than rewarding efficiency and quality services, implementation of the Budget Control Act in early 2013, specifically the sequestration provision, threatens to cut tribally administered programs by 8.2 percent.

While Self-Governance falls under discretionary funding, it must be understood that funding tribal programs is the fulfillment of treaty obligations between tribes and the United States. During this period of fiscal constraints, it is prudent to view the Self-Governance program as an effective administrative model deserving of support, rather than cutting funding to a program that is a solution to the federal government’s current economic challenges.

Self-governance builds tribal capacity. Cherokee Nation is currently the largest employer in northeastern Oklahoma and has an economic impact of more than \$1.06 billion on the State’s output level, including \$401 million in State income impacts. Cherokee Nation supports 13,527 jobs in a predominantly under-developed, rural region of Oklahoma. While 3,250 people are employed in the Nation’s government, an ever-increasing number

of people are employed in the Nation's diverse portfolio of businesses, which include the hospitality, healthcare, aerospace, and technology sectors.

Although the combined revenue streams from the Tribe's diverse business operations help fund essential government services that expand economic development and job growth in Oklahoma, there must also be adequate funding for IHS and BIA self-governance contracts.

**Indian Health Service:** Under a Self-Governance compact with the Department of Health and Human Services, the Cherokee Nation constructs and maintains waterlines and improves sanitary services throughout our region. Furthermore, utilizing IHS contract support cost dollars, the Tribe operates a sophisticated network of eight rural outpatient health centers that provide Native People with primary medical care, dental service, optometry, radiology, mammography, behavioral health promotion and disease prevention, and a public health nursing program.

In addition to these services, the Cherokee Nation operates W.W. Hastings Indian Hospital in Tahlequah, Oklahoma. Hastings is a 60-bed facility offering outpatient and ancillary services with over 300,000 outpatient visits each year and more than 335,000 prescriptions filled annually. Full funding is required to continue this successful partnership in fulfillment of the United States' trust obligations. Additionally, Cherokee Nation requests that this Committee work with all of Congress to ensure that IHS is exempt from future reductions during the appropriations process as well as sequestration that is set to go into effect in early 2013.

**Bureau of Indian Affairs:** Cherokee Nation compacts with the Department of Interior to administer a wide array of federal programs serving American Indians. Full federal funding is crucial for continued administration of social services, child wellness programs, child abuse services, adult and higher education, housing improvement, law enforcement service, road and bridge construction, planning and maintenance, forestry and real estate programs, and Johnson O'Malley education programs.

**Self-Governance Education Services:** One of the best examples of what happens when Native People administer their own programs is Sequoyah Schools system. In 1985, Cherokee Nation gained control of Sequoyah Schools, a former underperforming BIA boarding school. After years of tribal control, Sequoyah is now regionally and state accredited, consistently meets Adequate Yearly Progress goals and is flourishing. The Campus covers over 90 acres and houses more than 400 students in grades 7-12 representing 42 Tribes. Furthermore, in the 2011 and 2012 school years, ten Sequoyah Schools' seniors were named Gates Millennium Scholars by the Bill and Melinda Gates Foundation. This honor entitles the students to one of the most prestigious scholarships in the United States, including college tuition, books, fees, and room and board for up to eight years worth of higher education.

Cherokee Nation and other tribes better understand how to educate our children and provide cultural curricula that revitalizes and protects language and tribal history. The School also creates an academic environment that mirrors college preparatory schools by utilizing an advanced curriculum and using data collection to track student progress and

school performance, which allows the administrators to quickly address any deficiencies or problems that develop. In 2010, nearly 30 million dollars in tribal money went to fund Cherokee services like education programs. However, the Tribe is still reliant on federal grants and funding for many programs. Insufficient funding for contract support costs, and potentially sequestration, could force the reallocation of tribal funds, from successful services like education, to cover the shortfalls in other tribally-administered programs.

**Tribal Priority Allocations (TPA):** We join other Self-Governance Tribes in requesting that this Committee guarantees funding increases for the fundamental services provided under the broad category of TPA. Of the 566 federally-recognized Tribes, 235 Tribes manage their own affairs under Self-Governance agreements with the BIA. Although these tribes account for 42 percent of the federally-recognized tribes, they received roughly only 15 percent of the BIA budget, which bears the responsibility for providing services to all federally-recognized Tribes.

The President's FY 2013 budget includes \$2.5 billion for BIA, which is \$4.6 million or 0.2 percent below the FY 2012 enacted level. While this is basically level with FY 2012's Budget, any decrease strains tribal governments. Further, the budget proposes a total of \$897.4 million in Tribal Priority Allocations and to advance the policy of Self-Governance, we ask that Congress protects these funds as the budget process proceeds.

**Contract Support Costs (CSC):** CSCs for ISDEA contractors cover the independently-audited fixed overhead costs that an ISDEA contractor must incur to operate an agency activity, like annual audits and payroll administration. These costs are equivalent to "general and administrative costs" required by government procurement contractors, which are generally set by indirect cost rates issued by the federal government.

Because CSCs are fixed costs that a contractor must incur, tribes are required to either (1) reduce funds budgeted for critical healthcare, education and other services under contract to cover the shortfall; (2) divert tribal funds to subsidize the federal contract (when such tribal funds are available); or (3) use a combination of these two approaches. For example, every \$1 million that the Cherokee Nation must divert from direct patient care to cover a contract support costs shortfall, the Cherokee Nation health system must forego 5,800 patient visits.

While the President's FY 2013 Budget request for IHS is \$4.42 billion – an increase of \$115.9 million over the FY 2012 enacted level – IHS sees only a very modest \$5 million increase in IHS funding for contract support. The Cherokee Nation appreciates the increase, but it is less than a one percent increase over the FY 2012 enacted level. Although IHS has been reluctant to release shortfall reports, the National Tribal Contract Support Cost Coalition projects a CSC requirement of \$575.8 million for Indian Health Services. However IHS has only requested \$476.4 million, which would leave a shortfall of nearly \$100 million. This shortfall would substantially impact Cherokee Nation, which, like other tribes across the United States, operates replacement or joint-venture facilities throughout our tribal jurisdiction.

Fortunately in June of 2012, the House Appropriations Committee approved the Fiscal Year 2013 Interior-Environment Appropriations Funding Bill, which would almost fully

fund contract support costs. This Appropriations Bill would increase the IHS contract support cost line by roughly \$70 million to \$546 million, and would increase the BIA line by \$8 million to \$228 million – the BIA projects a FY 2013 requirement of \$242 million. Cherokee Nation is appreciative of these substantial increases in the midst of constrained budgets and sequestration’s planned implementation in early 2013.

Because CSCs are federal contractual obligations with tribes, Cherokee Nation hopes that this Committee ensures the Senate will work with the House to protect those increased IHS and BIA budgets over the President’s request. Shortfalls lead to reduced services and jobs for our people and the State of Oklahoma. Therefore, Cherokee Nation supports the House Appropriations language that provides near-full funding for CSCs and requests that the Senate uphold the increases.

**Ramah Navajo v. Salazar, 132 S. Ct. 2181 (2012):** In June of 2012, tribes achieved a huge victory for tribal self-determination and Self-Governance contracts with *Ramah v. Salazar*. In that case, the Supreme Court held that BIA had failed to fully fund CSCs between the years of 1994 – 2001. Previously in *Cherokee Nation v. Leavitt* (2005), the Supreme Court held that the United States is liable to pay full contract support costs where IHS failed to fully fund them. These decisions put tribal contractual agreements on the same level as all other federal contractual agreements, as they should have been all along.

Due to the ruling in *Ramah*, there will now be hundreds of tribes filing thousands of claims to recover CSC shortfall funds. Recently, Chickasaw Nation reached a roughly \$7 million settlement regarding a small portion of their filed claims. This relatively small claim took seven years. This is unacceptable. Therefore, I ask that this Committee works with the rest of Congress to ensure federal agencies are committed to adopting and utilizing a method that guarantees the fast processing of future claims.

Additionally, Congress should actively ensure that no technical barriers, such as statutes of limitation or claim presentment requirements, create agency obstructions. The claims process must also increase agency transparency. Finally, because of the lengthy claims process, the United States could more efficiently resolve the matter by simply negotiating a settlement of all CSC underpayments suffered by all tribal contractors from 1994 to present.

**Conclusion:** In conclusion, Cherokee Nation is committed to providing federal services and direct, local-level programs, including job creation, education, health and law enforcement services. Self-Governance is an efficient model that utilizes federal dollars better than what the U.S. Government could otherwise provide to tribal citizens. The federal government’s current fiscal situation, contract support cost shortfalls, and the pending threat of sequestration’s across-the-board budget cuts should not affect Cherokee Nation’s self-determination nor negate the United States’ trust and treat responsibilities. This is especially true when the program often underfunded is a shining example of better providing services without bureaucratic entanglements. Thank you for your continued support and for the opportunity to testify on “Advancing the Federal-Tribal Relationship through Self-Governance and Self-Determination.” I will happily answer any questions you may have.